

Repeal the 8th amendment to allow abortion in Ireland – this constitutional experiment has failed

*On 25 May, the Republic of Ireland votes in a referendum to decide whether to repeal the 8th amendment of its constitution, which effectively outlaws abortion. **Fiona de Londras** explains how the 8th amendment works, and what the proposed legal changes are.*



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The 8th amendment became part of the [Irish Constitution](#) in 1983. It recognises the right to life of ‘the unborn’ and says the state will ‘defend and vindicate’ that right with due regard to the equal right to life of ‘the mother’. As a result, abortion is legal in Ireland only if the woman’s life is at real and substantial risk; only if she will die without it.

The 8th was intended to prevent abortion in Ireland. It has failed. Around 5,000 women in Ireland have abortions every year, either in England or by importing and using abortion pills (a serious criminal offence).

Instead of stopping abortion, what the 8th actually prevents is doctors intervening to protect the health of their patients if that would jeopardise foetal life. It prevents elected and accountable politicians from making laws to respond to real-life need. It says that as long as a woman is still alive when her child is born the state has done its duty to her and, more importantly, to her child.

A better law is possible: a law that strikes a more workable, and more compassionate balance between two common goods of protecting foetal life and protecting the life and health of pregnant women. But this can only be achieved if Ireland votes to repeal the 8th amendment in the referendum being held on 25 May.

Ireland’s government has already said it intends to propose a [restricted, highly regulated system](#) for abortion care in Ireland if the people decide to repeal the 8th.

The plan is to allow a woman to access abortion up to 12 weeks into her pregnancy without having to justify her decision. This is not abortion on demand. A woman will not be able to simply walk into a pharmacy and buy abortion pills without a prescription. She will always have to engage with a doctor, who will have to certify that it is less than 12 weeks since the first day of her last period. The woman will also have to take a three-day waiting period.

In that time she will have the legal certainty she needs to focus on making her decision without having to worry about negotiating the practical challenges and isolation of illegality. She can speak with her doctor, partner, family, support network or counsellors to make the decision at hand, knowing that if it is still right for her she can access abortion in three days’ time.

That's better for women than the 8th amendment. It marks a shift from using the law to compel pregnancy, to using it to support decisions about whether to remain pregnant. It's also the only practical way to make abortion available to survivors of rape who wish to end their pregnancies and for that reason no 'rape clause' is proposed.

'Rape clauses' are extremely problematic. In countries where they exist they require women more or less to prove – sometimes to doctors, sometimes to police officers, sometimes to judges – that they were raped. They re-traumatise women. They sometimes jeopardise criminal trials against an assailant. They rely on women reporting rape, even though we know the vast majority of women are unable or unwilling to do so. Any attempt to make abortion generally illegal but to carve out an exception for rape simply won't work. Ireland has had 35 years of a law on abortion that does not work; the government must not introduce another one.

Tightly regulated

Under the proposed law, the Irish state will step in and severely restrict abortion after 12 weeks. Despite what posters all over the country suggest, it's [categorically untrue](#) that there will be abortion without effective restriction up to six months. Once a foetus is viable it will be a crime to provide abortion; only emergency care, where there is an immediate risk to a woman's life or immediate serious risk to her health and abortion is immediately necessary will be exempted from that general rule. After 12 weeks, and until viability, abortion will only be lawful where two doctors, one of whom is an obstetrician, certify that there is a risk to life or a serious risk to the health of the pregnant woman.

That is not some so-called vague mental health ground; it is the application of clinical assessment to the health of a pregnant woman. It is allowing doctors to practice medicine: providing the legal environment in which they can support a patient in understanding the risks to her health or life and deciding whether these are risks she is willing to bear. This is completely different to the law in England, which is so often called in aid by those opposed to repealing the 8th amendment, presented as a spectre of an abortion regime to come.

The [1967 Abortion Act](#) allows for abortion in England up to 24 weeks where there is any risk to the health of a pregnant woman (physical or mental), and after that without time limit where there is a serious risk to health, a risk to life, or a diagnosis that means the foetus would be 'severely handicapped'.

Ireland's law would not only have far shorter time limits, more restrictive grounds, and a more rigorous process of medical certification, but it would also categorically not allow for abortion on the grounds of disability. Vitally, it would allow for termination where a woman has received a fatal diagnosis for her foetus – that is, a diagnosis that means it will die before or shortly after birth.

Under the 8th amendment, women in this situation cannot access termination in Ireland; they must either continue their pregnancy until the foetus dies inside them, regardless of the impact of that on their mental and physical health and that of their other children, or they must travel abroad for care. An average of two families every week find themselves in this situation, and their doctors must also bear the emotional and ethical burden of abandoning them to the medical care of another country.

If people feel the 8th amendment does cruelty to women who have survived rape and incest, who are at risk of catastrophic harm to their health, or who have received a fatal diagnosis for their foetus, then the only possible answer is to repeal the 8th amendment. As long as it remains in the constitution, Ireland cannot show compassion for these women. Without it, they can finally be cared for at home, in Ireland.

This article gives the views of the author, not the position of Democratic Audit. This article was originally published on [The Conversation](#). Read the [original article](#).

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